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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,376	11/26/2003	Alan D. Olin	70494.6 (M-16842-4P US)	8032
32605	7590	09/21/2010		
Haynes and Boone, LLP IP Section 2323 Victory Avenue SUITE 700 Dallas, TX 75219			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 09/21/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/723,376	Applicant(s) OLIN ET AL.	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-13,15,17-24,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-9,11,12,15,17-21,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,10,13,22,32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 10, 13, 22, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Document No. 11-59701 to Nakagome et al. and U.S. Patent No.6,007,246 to Kinigakis et al.

Nakagome et al. discloses a bag comprising a top end having a seal, a bottom end, first and second side edges on opposite sides of the bag each extending between the top and bottom ends, the first side edge is straight and has a non-gusseted portion located proximate to the top end, the first side edge forming an acute included angle with the top end at seal (7) and being substantially perpendicular to and longer than the bottom end. A pour spout is located along the non-gusseted portion and oriented substantially parallel to the first side edge to provide access to an opening. However, Nakagome et al. does not show the bottom end having a generally ovoid shape. Kinigakis et al. discloses that it is known in the art of dispensing bags to provide a bottom end that is generally ovoid in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom end of Nakagome et al. with the ovoid-shaped, bottom end of Kinigakis et al., in order to permit the bag to rest in an upright position.

Furthermore, Nakagome et al. discloses the claimed device, as discussed above. Nakagome et al. especially discloses the pour spout and opening being initially accessed by a tear strip that is parallel to the first side edge. However, Nakagome et al. does not disclose the opening being reclosable by a reclosable fastener in the pour spout. Kinigakis et al. discloses that it is known in the art to provide a reclosable, zipper fastener in the pour spout of an analogous bag. Kinigakis et al. further discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed. Providing the pour spout of Nakagome et al. with the reclosable, zipper fastener of Kinigakis et al., as discussed above, meets the recitation "a reclosable fastener provided over a reclosable opening located proximate to the top end, forming an included angle of less than 90 degrees, being closer to the top end than to the bottom end and being substantially vertical when the bag is in the generally upright position".

Response to Arguments

3. Applicant's arguments filed 07/12/2010 have been fully considered but they are not persuasive.

Applicant remarks that when the tear strip (11), in Figs. 3 and 4 of Nakagome, is removed, a notched part is formed. Applicant further remarks that unless the notched

Art Unit: 3782

part is removed, Nakagome does not meet the extent and straightness limitations on the first side. However, it is brought to applicant's attention that although a notched part is *subsequently formed* in the Nakagome embodiments of Figs. 3 and 4, that does not remove the fact Figs. 3 and 4 clearly show first and second side edges on opposite sides of the bag each extending between the top and bottom ends, the first side edge is straight and has a non-gusseted portion located proximate to the top end, as claimed.

Moreover, Nakagome meets the claims' extent and straightness limitations on the first edge to the same degree that applicant's bag depicted in Figs. 1-4 forms a notched part when tear strip (26) is removed.

Applicant is correct in stating "Claim 1 does not recite a 'reclosable fastener...forming an included angle less than 90 degrees [with the top end]". It is noted that this limitation is found in independent claim 13. However, contrary to applicant's remarks, nowhere in the Office action does the Examiner explicitly remark that the limitation is found in claim 1.

Regarding applicant's remark that Nakagome does not meet the recitation "the first side edge forming an acute included angle with the top end", the Examiner disagrees. Figs. 3 and 4 of Nakagome clearly show the first side edge along the seal (4) forms an acute included angle with top end at the seal (7), which is part of the top end.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the Nakagome and Kinigakis references, the Examiner recognizes that obviousness may be established by combining or modifying the

Art Unit: 3782

teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, Kinigakis suggests that it is desirable in the art to provide a reclosable, zipper fastener in the pour spout of a dispensing bag.

Furthermore, applicant's remark that the refilling pouch of Nakagome is a single-use bag is unsupported opinion. Applicant further fails to provide support for the remark that the Nakagome bag is not intended to be reused.

Applicant misrepresents the Office action with the statement that " the Examiner's proposed modification of Nakagome's pour spout by Kinigaki's [sic] dispensing orifice 24, together with the reclosable structure 34, would necessarily remove Nakagome's "notched part" 8 (otherwise, the extent and straightness limitations on the first side edge, discussed above, would not be met)." Nowhere in the Office action was it proposed to modify the pour spout of Nakagome with the dispensing orifice **and** reclosable structure of Kinigakis. The Office action explicitly states, "It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al." There is no mention of replacing the pour spout, and thus the notched part, of Nakagome with both the dispensing orifice and reclosable structure of Kinigakis, as implied by applicant.

In response to applicant's argument that the Examiner's suggested modification would render the resulting structure unsatisfactory for its intended purpose and change

Art Unit: 3782

Nakagome's principle operation, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, Kinigakis suggests to a person having ordinary skill in the art that it is desirable provide a reclosable, zipper fastener in the pour spout of a dispensing bag.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing

Art Unit: 3782

out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Art Unit: 3782

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/
Primary Examiner, Art Unit 3782